

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 79 of 1982

in

SPECIAL CIVIL APPLICATION No 1309 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No.

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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STATE OF GUJARAT

Versus

N M KHAN  
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Appearance:

MR HM BHAGAT for Appellant

NOTICE SERVED for Respondent No. 1  
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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE C.K.BUCH

Date of decision: 06/11/98

ORAL JUDGEMENT (Per:Patel.J)

The State, being aggrieved by the decision of the learned single Judge in Special Civil Application No. 1309 of 1979 decided on 13.4.1981, has preferred this appeal.

2. The respondent herein was appointed as Stenographer Gr.II on 17.12.1978 on probation for a period of one year. However, as the services rendered by the respondent were found unsatisfactory, the services of the respondent were terminated by an order dated 2.4.79.

3. The respondent being aggrieved by the said order of termination preferred, aforesaid Special Civil Application. The State filed affidavit-in-reply in which the State had given necessary details that; the original petitioner respondent herein-was irregular in attendance of his duties and was frequently availing the benefit of casual leave and on several occasions without report being submitted to the office was remaining absent. By giving details, it was pointed out in the affidavit that the respondent herein was continuously irregular who did not even care to submit the leave report and the services of the respondent were not found even satisfactory. It is in this back ground that the order terminating the services of the respondent came to be passed on 2.4.79. It is further pointed out that during the period of probation as the services of the respondent were found not satisfactory, the impugned order came to be passed.

4. It was submitted before the learned single Judge on behalf of the respondent that the order of termination is penal in nature and it does not speak of the service having been put to an end because of his performance being found unsatisfactory. The learned single Judge under these circumstances observed that it can be said to be a penal order passed by the State because of his alleged proceeding on leave at times without prior permission and at times after getting the leave sanctioned and after the period of absence.

5. The employee continues to be on probation till he is confirmed and it cannot be said that he has been absorbed on regular establishment without the order of confirmation. There must be specific order about confirmation appointing the employee on regular establishment and till that order is passed, he is deemed to have continued on probation. In the instant case, it

is pointed out that the period of probation was further extended and it is the case of respondent in fact that he was under probation. In the affidavit in reply instances were pointed out and on the basis of such instances it is submitted that the respondent did not even care to report in time for attending his duties and was continuously irregular in performance of his duties and his services were not found to be satisfactory. In case of a probationer, his work is to be assessed for confirmation or continuation in services and when this assessment has been made, shortcoming in his work or some other conduct has to be noticed, the crux of this discussion is that merely on the basis of these things, it cannot be said that the termination has been made by way of penalty.

6. In the case of State of Orissa vs. Ram Narayan Das (AIR 1961 SC 177), Apex Court held that in case of a probationer, observations like unsatisfactory work and conduct would not amount to attaching stigma to the order. In the instant case what is mentioned in the order is that services of the petitioner are terminated. Reading the order, it cannot be said that it attaches any stigma. Reference may be made to reported decisions of the Apex Court in the case of Union of India Vs. R.S. Dhoba reported in (1969) 3 SCC 603 and Harising Mann vs. State of Punjab reported in (1975) 3 SCC 182 wherein the words "found unsuitable" and "unfit for appointment" were not considered attaching stigma.

Apex Court has pointed out in several decisions that the very object of the probation is to test the suitability and if the appointing authority finds that the probationer is unsuitable, the appointing authority has power to terminate his services. In affidavit in reply the appointing authority has disclosed the reasons in support of the order; it cannot be said that the reasons mentioned constitute motive and not foundation for termination of services (1996) 5 SCC 89).

7. As the order was challenged, the action was required to be defended and the employer was required to give sufficient material on the basis of which the employee was considered unfit for the job. However, on the basis of this material, it cannot be said that by way of penalty the employee's services came to be terminated. In a termination order simpliciter of a probationer, reasons are not to be given in the order and the care is to be taken that the order be as innocuous as it can be so that the employee may not carry any stigma. The order which is placed on record does not indicate any stigma

and it is clear that it is an order of termination simpliciter . The learned single Judge considered the averments made in the affidavit on behalf of the State as a part of the order terminating the services of the respondent and came to the conclusion that that attaches stigma. Learned Judge was required to consider the order of termination of a probationer and not the reasons disclosed in support of the action taken by the employer. We are of the opinion that on the basis of order of termination simpliciter which does not carry any stigma, the impugned order cannot sustain. The Apex Court in the case of Hukum Chand Khundia vs. Chandigarh Administration & anor. (1995) 6 SCC 534 has pointed that

" when the services of an employee was found unsatisfactory for the reasons indicated and since the employee was holding a temporary service and was on probation, the order of termination simpliciter has been passed without attaching any stigma against him, cannot be said to be a penal and no formal inquiry is required in such a case". The Court held that " we do not think that in reality, an order of punishment has been passed against the petitioner in the cloak or pretence of termination simpliciter without holding any departmental proceeding thereby violating Article 311 of the Constitution. We therefore, find no merit in this petition and the same is dismissed."

8. In view of what is stated above, impugned order is quashed and set aside the appeal filed by the State is required to be allowed and the same is accordingly allowed with no order as to costs.

(B.C.Patel.J)

(C.K.Buch.J)